IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 7074 (SS) OF 2001

Ram Pyare Patel,
Aged about 43 years,
S/o Shri Sarju Prasad Patel,
R/o Raj Bhawan Campus,
Nainital. .....Petitioner.

Versus

1. State of Uttaranchal, through the Secretary Public Works Department, Government of Uttaranchal, Secretariat, Dehradun.
2. Chief Engineer, Public Works Department, Dehradun, Uttaranchal.
3. Executive Engineer, Nirman Khand, Public Works Department, Nainital.

.....Respondents.

Ms. Menka Tripathi, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated: 06.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the opposite parties to regularize the services of the petitioners a "Liftman" in the establishment of the opposite parties. Further prayer has been made for a writ of mandamus commanding the opposite parties to pay the salary to the petitioner in regular mechanical scale of pay as admissible to a person working on regular basis together with all other consequential benefits which are available to the regularly selected Class IV employee, regularly, every month.

Briefly stated, On 09.06.1983, the petitioner was appointed as Liftman on work charge in the establishment of the opposite parties at Raj Bhawan, Nainital on a pay scale of Rs. 305-390/-. Thereafter, the petitioner was regularized in service on the post held by him since 09.06.1983.

The petitioner has submitted that seventeen years of service have been passed, but his service has not yet been regularized.

Learned counsel for the petitioner has submitted that it is well settled proposition of service jurisprudence that if an employee is working on a post since last 3-4 years either on daily wage basis or on adhoc basis or work charge basis, the same reveals that the post occupied by such employee is a permanent one and the work is of perennial nature and the incumbent of the post is entitled to be regularized on that post.

Petitioner has submitted that he has filed a representation (Annexure No. 2) stating his grievance, but no action has been taken by the authorities although he has worked continuously for more than 17 years on the post of work charge basis but his service has not yet been regularized.

A counter affidavit has been filed, where in paragraph 2 it has been stated that the petitioner is working since 9/6/83 as work charge on the post of Liftman at Raj Bhawan, Nainital and the petitioner had originally been sent by the Lift Company to control the said lift and salary was being paid to him as per direction of the said Company and accordingly he is being paid the salary. He was never appointed by the P.W.D. because there is no post created as Liftman. In paragraph 2 it has been submitted that since 9/6/83, the post of Liftman has not been created in the department, hence payment of salary for the said post cannot be paid by the department and no pay

scale is fixed in the department as there is no such post available.

However, liberty is given to the petitioner to file a fresh, representation before the authority concerned within a period of two weeks from the date of presentation of the certified copy of the order. If such a representation is filed, respondents are directed to dispose of the same along with the old representation-dated 06.11.1996 within a period of one month thereafter. In the meantime the petitioner shall be paid minimum of the pay scale.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

06.03.2006

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